REMARKS

Claims 1, 10-14, 17, 32, 35-40, 52, 61-65, 68, 86-91, 103, 104, 106, 107, 109, 110, 112, 113, and 129 are amended. Claims 16, 41-51, 67, 92-102, 105, 108, 111, and 114 are canceled without prejudice or disclaimer. Thus, claims 1-15, 17-40, 52-66, 68-91, 103, 104, 106, 107, 109, 110, 112, 113, and 115-129 remain pending in this application.

§ 101 Rejection of Claims 106-108

Applicants respectfully traverse this rejection as applied to claims 106 and 107 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

The Office Action alleges, "Applicant's specification, (See pg. 51), identifies the computer-readable media as 'a carrier wave received from a network such as the Internet.' When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement." Final Office Action at page 2, numbered paragraph 3.

The Examiner objects to the language in the preambles of claims 106 and 107. The Examiner states that the claims should recite, for example, "'A computer-readable medium **encoded with** instructions **capable of being executed by a computer...**'" Final Office Action at page 3, numbered paragraph 4 (emphasis in original).

The preambles of claims 106 and 107 are amended to be consistent with the Examiner's suggested language.

Furthermore, the computer-readable media recited in claims 106 and 107 do <u>not</u> contain merely "nonfunctional descriptive material" as alleged in the final Office Action. The MPEP distinguishes between functional and nonfunctional descriptive material: "'[F]unctional descriptive material' consists of data structures and <u>computer programs</u> which impart functionality when employed as a computer component. 'Nonfunctional descriptive material' includes but is not limited to <u>music</u>, <u>literary works</u>, and <u>a compilation or mere arrangement of data</u>." MPEP § 2106.01 (emphasis added). Consistent with the examples provided by the MPEP, each of claims 106-108 recites a computer-readable medium that is encoded with "<u>instructions capable of being executed by a computer</u>" (emphasis added). The computer instructions recited in claims 106 and 107 are analogous to the computer programs that MPEP clearly defines as "functional" at § 2106.01. Specifically, the computer "instructions" recited in the claims have the functionality that is recited in these claims.

The Examiner quotes the MPEP in stating, "[w]hen <u>nonfunctional</u> descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement" (emphasis added). However, this quotation is inapposite since computer instructions constitute <u>functional</u> descriptive material, as explained in MPEP § 2106.01. Thus, a computer-readable medium that is encoded with instructions capable of being executed by a computer is indeed statutory.

Since amended claims 106 and 107 recite functional material, Applicants

respectfully request that this rejection of claims 106 and 107 under 35 U.S.C. § 101 be

withdrawn. This rejection is moot as applied to claim 108 since claim 108 is canceled.

§ 102(e) Rejection of Claims 1-129 over *Wittenkamp*

Applicants respectfully traverse this rejection as applied to claims 1-15, 17-40,

52-66, 68-91, 103, 104, 106, 107, 109, 110, 112, 113, and 115-129 under 35 U.S.C.

§ 102(e) as anticipated by U.S. Patent Application Publication No. 2002/0082028 to

Wittenkamp ("*Wittenkamp*"). To properly anticipate Applicants' claims under 35 U.S.C.

§ 102, each and every element as set forth in the claim must be found, either expressly

or inherently described, in a single prior art reference. *See* M.P.E.P. § 2131.

Wittenkamp fails to anticipate these claims because *Wittenkamp* does not disclose each

and every element of these claims.

Independent claim 1 is not anticipated by *Wittenkamp* for at least the reason that

Wittenkamp fails to disclose a method comprising, inter alia, "intercepting a

communication from a calling party to a device associated with a particular user," as

recited in the claim.

Wittenkamp discloses, "[a] telecommunication environment 10 . . ., such as

commonly exists in an office, which has both a voice network in the form of a POTS

network 12 and an IP network 14 . . . [A]n outside calling device 20, referred to

generally as 'caller' 20, calls into the POTS network 12 and is connected to a Private

Branch Exchange (PBX) 22 serving the office location. The call may be routed,

according to the POTS network 12 in this example, to a telephone receptionist using a

voice telephone 23." (Paragraph [0023]). *Wittenkamp* continues, "[u]pon learning the intended destination of the call at device 23, the call may be placed in a park queue 24 . . . A server 27 is preferably used to broadcast a paging message 28(*a . . . n*) to the IP nodes in the IP network 14." (Paragraph [0024]). *Wittenkamp* discloses, "[t]he IP nodes, or data terminals, in this case PC terminals 30(*a . . . n*), receive paging message 28(*a . . . n*) providing information regarding the identity of the called party . . ." (Paragraph [0025]). According to *Wittenkamp*, "[e]ach terminal 30(*a . . . n*) may have an associated voice network node 32(*a . . . n*), in this example a POTS of the type typically found in an office, located in the proximity of the terminals 30(*a . . . n*)." (Paragraph [0026]). *Wittenkamp* further discloses, "the recipient of the paging message 28(*b*) may choose to accept or decline the call by using buttons 42 or 44, respectively. . . . [U]pon an indication of willingness to accept the call by input from the 'accept' button 42, the server 27 routes the call from the queue position 46 to the telephone device 32(*b*) associated with the accepting terminal 30(*b*)." (Paragraph [0028]).

However, *Wittenkamp* does <u>not</u> disclose "<u>determining</u> whether the preferred device of the user requires a <u>different data format</u> than a device used by the calling party to initiate the communication" and "<u>reformatting</u> the communication to <u>match</u> the data format of preferred device . . .," as recited in claim 1 (emphasis added).

Instead, *Wittenkamp* discloses that "[t]he incoming <u>voice</u> call is . . . routed in <u>network voice resources</u> . . ." *Wittenkamp* at page 1, paragraph [0008] (emphasis added). For example, the incoming voice call may be routed in <u>voice resources</u> to a wireless telephone (50). *Id.* at page 3, paragraph [0029].

Wittenkamp is silent as to determining whether "the preferred device of the user requires a <u>different</u> data format than a device used by the calling party to initiate the communication," as recited in claim 1. *Wittenkamp* only discloses routing a <u>voice</u> call in <u>voice</u> resources to a phone extension 32(*a. . . n*) or wireless telephone (50). There is not any disclosure in *Wittenkamp* of any "data format" other than "voice resources." *Wittenkamp*, therefore, also cannot disclose "<u>reformatting</u> the communication to <u>match</u> the data format of preferred device . . .," as recited in claim 1 (emphasis added).

Thus, for at least these reasons, *Wittenkamp* fails to disclose a method comprising, inter alia, "<u>determining</u> whether the preferred device of the user requires a <u>different data format</u> than a device used by the calling party to initiate the communication" and "<u>reformatting</u> the communication to <u>match</u> the data format of preferred device . . .," as recited in claim 1 (emphasis added).

Independent claims 17, 52, 68, 103, 104, 106, 107, 109, 110, 112, 113, and 129 are not anticipated by *Wittenkamp* for reasons similar to those explained above in relation to claim 1.

Furthermore, independent claim 17 is not anticipated by *Wittenkamp* for the additional reason that *Wittenkamp* fails to disclose a method comprising, inter alia, "initiating a first call to a device of the calling party;" "initiating a second call to the preferred device of the user;" and "<u>connecting the first call to the second call</u>," as recited in the claim (emphasis added). For example, *Wittenkamp* is silent on the matter of "<u>connecting the first call to the second call</u>" (emphasis added). Although Applicants have previously pointed out (in the Amendment filed June 27, 2008) that this rejection is

deficient since it does not indicate where each and every element of claim 17 can allegedly be found in *Wittenkamp*, the final Office Action still fails to indicate where "connecting the first call to the second call," as recited in amended claim 17 (emphasis added), is allegedly disclosed by *Wittenkamp*.

The Examiner alleges that the "first call" recited in the claim corresponds "indicating to the caller that the device attempting to be reached is not available," and that the "second call" recited in the claim corresponds to a call to a "location where the call is desired." Final Office Action at page 12, numbered paragraph 36. However, one of ordinary skill in the art would not be motivated to connect this alleged "first call" to this alleged "second call." Indeed, the alleged "first call" presents a scenario that is inconsistent with the scenario presented by the "second call"; either the caller is available at the location where the call is desired, or the caller is not available. The two contradictory scenarios cannot occur simultaneously. One of ordinary skill would therefore understand that it would not make any sense to connect this alleged "first call" to this alleged "second call." Thus, *Wittenkamp* fails to disclose a method comprising, inter alia, "initiating a first call to a device of the calling party;" "initiating a second call to the preferred device of the user;" and "connecting the first call to the second call," as recited in claim 17 (emphasis added).

Independent claims 40, 68, 91, 104, 107, 110, and 113, are not anticipated by *Wittenkamp* for similar reasons to claim 17.

Independent claim 129 is not anticipated by *Wittenkamp* for the additional reason that *Wittenkamp* fails to disclose a method comprising, inter alia, "presenting the calling

party with an appropriate overlay to communicate with the preferred device of the user based on the ascertaining," as recited in the claim. For example, broadcasting the paging message (28(a . . . n)) to the <u>called</u> party of *Wittenkamp* does not constitute "presenting the <u>calling</u> party an appropriate overlay to communicate with the preferred device," as recited in claim 129, for at least the reason that the "called" party described in *Wittenkamp* does not constitute a "calling" party as recited in claim 129. Thus, *Wittenkamp* does not disclose a method comprising, inter alia, "presenting the calling party with an appropriate overlay to communicate with the preferred device of the user based on the ascertaining," as recited in claim 129.

Furthermore, dependent claims 11, 36, 62, and 87 are not anticipated by *Wittenkamp* for the additional reason that *Wittenkamp* does not disclose that "the data format of the device of the calling party comprises <u>voice</u> data and the data format of the preferred device of the user comprises <u>text</u> data, or vice versa," as recited in these claims. For example, the "PC terminals 30(a . . . n)" do not constitute "the preferred device of the user" recited in claim 11 for at least the reason that <u>all</u> of the PC terminals (30(a . . . n)) receive all of the paging messages (28(a . . . n)) as an intermediate step to locating a voice telephone used by the called party. Thus, *Wittenkamp* fails to disclose that "the data format of the device of the calling party comprises <u>voice</u> data and the data format of the preferred device of the user comprises <u>text</u> data, or vice versa," as recited in claims 11, 36, 62, and 87.

Thus, since *Wittenkamp* fails to disclose each and every element of independent claims 1, 17, 40, 52, 68, 91, 103, 104, 106, 107, 109, 110, 112, 113, and 129, these

claims and claims 2-15, 18-39, 53-66, 69-90, and 115-128, which depend therefrom, are

not anticipated by *Wittenkamp*. This rejection is moot as applied to claims 16, 41-51,

67, 92-102, 105, 108, 111, and 114 since these claims are canceled.

§ 103(a) Rejection of Claims 25-31, 48, 49, 76-82, 99, and 100 over *Wittenkamp* and *Frey*

Applicants respectfully traverse this rejection as applied to claims 25-31 and 76-

82 under 35 U.S.C. § 103(a) as unpatentable over *Wittenkamp* in view of U.S. Patent

No. 6,535,596 to Frey et al. ("*Frey*").

Claims 25-31 and 76-82 are allowable over *Wittenkamp* and *Frey* for at least the

reason that these claims depend from independent claims 17, 42, 68, and 93.

Wittenkamp does not teach or suggest the elements of independent claims 17, 42, 68,

and 93 for the reasons explained in detail above.

Frey does not make up for these deficiencies of *Wittenkamp* because *Frey* also

fails to teach or suggest the elements discussed above. Moreover, the Examiner does

not rely on *Frey* for any teaching or suggestion of these elements (*see* Office Action at,

e.g., page 8, numbered paragraph 28).

Thus, for at least the reason that *Wittenkamp* and *Frey* do not render obvious

independent claims 17, 42, 68, and 93, claims 25-31 and 76-82, which depend

therefrom, are allowable over *Wittenkamp* and *Frey*. This rejection is moot as applied to

claims 48, 49, 99, and 100 since these claims are canceled.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: January 30, 2009   By:_____

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